



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

Via Email: mmizuki@martinellis.com

In Reply Refer to:
S. Martinelli & Co.
735 West Beach Street
Watsonville, California 95076

Mark Mizuki
VP of Operations
S. Martinelli & Company
735 West Beach Street
Watsonville, California 95076

RE: Notification of Potential Enforcement Action for Violations of Section 312 of the
Emergency Planning and Community Right-to-Know Act and Section 112(r)(1) of the
Clean Air Act

Dear Mark Mizuki:

As you know, representatives from the U.S. Environmental Protection Agency, Region 9 ("EPA") conducted an inspection on September 28, 2021, of the S. Martinelli & Co. (the "Company") West Beach facility located at 735 West Beach Street, Watsonville, California 95076 ("Facility"). The purpose of the inspection was to determine the Facility's compliance with requirements under the Emergency Planning and Community Right-to-Know Act ("EPCRA") sections 304-312, 42 U.S.C. §§ 11004-11022; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") section 103, 42 U.S.C. § 9603; and the General Duty Clause of section 112(r)(1), of the Clean Air Act ("CAA"), 42 U.S.C. § 7412(r)(1).

Based upon the information obtained during our investigation, EPA is prepared to initiate a civil administrative action against the Company to ensure compliance with federal law and assess a penalty pursuant to sections 325(c) and (d) of the EPCRA, 42 U.S.C. § 11045(c) and (d) and section 113 of the CAA, 42 U.S.C. § 7413. The anticipated administrative action includes violations of EPCRA section 312, 42 U.S.C. § 11022, and its implementing regulations, and CAA section 112(r)(1), 42 U.S.C. § 7412(r)(1), the "General Duty Clause," by which the owners and operators of facilities producing, processing, handling or storing regulated substances have a general duty to identify hazards which may result from accidental releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are

necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

Specifically, EPA is considering the allegations described below against the Company. For each allegation, the corresponding area of concern (AOC) identified in EPA's Offsite Inspection Report sent to the Company on December 17, 2021, is provided.

EPCRA Section 312, 40 CFR part 370

- 1) **EPCRA Section 312, Tier II Reporting.** EPA identified multiple deficiencies in the submittals of the Facility's Hazardous Materials and Waste Inventory Matrix Report. The report must be submitted between January 1 and March 1 for the preceding regulatory year (RY). 42 U.S.C. § 11022(a)(2); 40 CFR § 370.45. (AOC 1)
 - a) The report for RY 2020 was submitted on July 29, 2021.
 - b) The report for RY 2019 was submitted on September 22, 2020.
 - c) The report for RY 2018 was submitted on August 5, 2019.
 - d) The report for RY 2017 was submitted on December 19, 2018.

CAA 112(r)(1) General Duty Clause

Identifying Hazards

The Company failed to identify hazards related to the regulated substance, as identified in the following deficiencies.

- 2) The 2021 Hazard Review recommendations indicate the refrigeration contractor should be maintaining records regarding annual safety cutout testing, but the contractor has no records and only indicates "OK" or no notation as shown on the preventive maintenance document with filename 2021 WB_NH3SYS_12M_5_2021.pdf. Without adequate documentation, verification that all the safety cutouts were tested and will function when required is unknown. (AOC 3 and 18)

Examples of industry standards of care are:

- a) Center for Chemical Process Safety (CCPS) Hazard Evaluation Procedures, third edition, states, "...hazard evaluations are used to pinpoint weaknesses in the design and operation of facilities that could lead to hazardous material releases, fires, or explosions. These studies provide organizations with information to help them improve the safety and manage the risk of their operations"; and "Using hazard evaluation techniques is one way to increase a company's understanding of the risk associated with a planned or existing process or activity so that appropriate risk management decisions can be made."

- b) California Code of Regulations, Title 19 Division 2, Chapter 4.5, Article 5, Section 2755.2 (e) states, “The owner or operator shall document the results of the hazard review and ensure that problems identified are resolved. . . The final resolution taken to address the hazard review recommendation and the actual completion date shall be documented.”
- c) FM Global 7-43, 17-2, 2017 Process Safety Section 2.1.3.4 states, “Develop a system to prioritize and address PHA [Process Hazard Analysis] findings. Track all findings to resolution within an appropriate timeframe that is defined by the organization’s PHA policy.”
- d) IIAR 6, 2019 Section 5.3.2 states, “Inspection, testing and maintenance records shall be readily accessible, whether filed at the facility, offsite, or electronically.” Sections 6.1 and 7.1 require annual testing of safety cutouts for equipment.

Design and Maintain a Safe Facility

The Company failed to design and maintain a safe facility taking such steps as are necessary to prevent accidental releases of a regulated substance, as identified in the following deficiencies.

- 3) According to the Company’s response to AOC 5, pressure vessel SD-02 was taken out of service in 2018, but EPA’s review of the Company’s documents indicates that this change was not updated in the Facility’s Process and Instrumentation Diagrams (P&IDs). Examples of industry standards of care are:
 - a) CCPS Guidelines for Process Safety Documentation, Chapter 5, states, “A comprehensive compilation of documented information on the process and related safety information enables employers and the employees involved in operating the process to identify, understand and avoid potential hazards.”
 - b) California Code of Regulations, Title 19 Division 2, Chapter 4.5, Article 5, Section 2755.1(c) states, “The owner or operator shall update the safety information if a major change occurs that makes the information inaccurate.” California Code of Regulations, Title 19 Division 2, Chapter 4.5, Article 6, Section 2760.1(d)(1)(B) also states that the owner or operator shall compile, maintain, and keep up-to-date process safety information, including piping and instrument diagrams.
 - c) FM Global 7-43, 17-2, 2017 Process Safety Section 2.1.2.1 states, “2.1.2.1 Ensure all information compiled to understand the hazards and ensure the safe and reliable operation of the plant is available to all company personnel. This includes all information required to complete a process hazard analysis. Key elements include the following...Process flow diagrams, piping & instrumentation diagrams (P&ID) ...”
- 4) According to the Company’s response to AOC 5, the Company does not have U1 documentation for pressure vessel OS-1. If the Company is unable to obtain U1 documentation for the vessel, the Company must maintain documentation on OS-1 with

information that is typically described in U1 documentation, such as materials of construction and the maximum allowable working pressure (MAWP). Examples of industry standards of care are:

- a) CCPS Guidelines for Process Safety Documentation, 1995, 5.2.2 states, “A comprehensive compilation of documented information on the process and related safety information enables employers and the employees involved in operating the process to identify, understand and avoid potential hazards...safe upper and lower limits for parameters such as temperature, pressure, flows or compositions... materials of construction...”
 - b) FM Global 7-43, 17-2, 2017 Process Safety Section 2.1.2.1 states, “2.1.2.1 Ensure all information compiled to understand the hazards and ensure the safe and reliable operation of the plant is available to all company personnel. This includes all information required to complete a process hazard analysis. Key elements include the following...Engineering drawings and calculations...Specifications for design, fabrication, and installation of fixed and rotating equipment [materials of construction] ... Safe operating limits (SOL) [Maximum Allowable Working Pressure] ...”
 - c) California Code of Regulations, Title 19 Division 2, Chapter 4.5, Article 5, Section 2755.1(a) states, “The owner or operator shall compile and maintain the following up-to-date safety information related to the regulated substances, processes, and equipment... Safe upper and lower temperatures, pressures, flows, and compositions... Equipment specifications...”
- 5) The engine room does not have an audio or visual alarm(s) that will alert employees in the area in the event of a release. According to the company’s response to AOC 7, the engine room has an ammonia sensor that notifies First Alarm Company and activates emergency ventilation at 25 ppm, but there are no audio or visual alarms for employees in the area of exposure. (AOC 7) Examples of industry standards of care are:
- a) ANSI/IIAR 2-2008, Section 13.2 states, “Each refrigerating machinery room shall contain at least two refrigerant detectors that actuate an alarm and mechanical ventilation.”
 - b) ASHRAE 15-2013, Section 8.11.2.1 states, “Each refrigerating machinery room shall contain a detector, located in an area where refrigerant from a leak will concentrate, that actuates an alarm and mechanical ventilation in accordance with Section 8.11.4 at a value not greater than the corresponding [threshold limit value - time-weighted average (TLV-TWA)].”
- 6) At the time of EPA’s inspection, the engine room alarm was set to annunciate at 50 ppm, which is above the TLV-TWA for ammonia of 25 ppm. (AOC 8) Examples of industry standards of care are:

- a) ANSI/IIAR 2-2008, Section 13.2.3.1 states, “One detector shall be utilized to activate an alarm and actuate the normal mechanical ventilation system (at its maximum design capacity) at a value not greater than the corresponding TLV-TWA.”
 - b) ASHRAE 15-2013, Section 8.11.2.1 which states, “Each refrigerating machinery room shall contain a detector, located in an area where refrigerant from a leak will concentrate, that actuates an alarm and mechanical ventilation in accordance with Section 8.11.4 at a value not greater than the corresponding TLV-TWA.”
 - c) CalOSHA’s Permissible Exposure Limit for ammonia is 25 ppm, according to California Code of Regulations, Title 8, Section 5155, Table AC-1.
- 7) At the time of EPA’s inspection, the Company was not testing the settings and functionality of the alarms associated with the ammonia sensors at least annually. (AOC 9) Examples of industry standards of care are:
- a) ANSI/IIAR 2-2008, Section 13.2.5.1 states, “The facility shall establish a time schedule for testing of the ammonia detectors and the alarm system. The manufacturer’s recommendations shall be followed or modified based on documented experience”
 - b) ANSI/IIAR 2-2008, Section 13.2.5.2 states, “Where no recommendations are provided, these devices shall be functionally tested on an annual basis”
 - c) IIAR 6-2019, Table 12.3, Ammonia Detection Alarm Systems Inspection, Testing, and Maintenance Tasks, states, “Functionally test alarms -audio and visual”
 - d) ASHRAE 15-2013, Section 11.6.3 which states, “Detector(s), alarm(s), and mechanical ventilating systems shall be tested in accordance with manufacturers’ specifications and the requirements of the jurisdiction having authority.”
- 8) At the time of EPA’s inspection, the audible and visual ammonia alarms near the entry door to the ammonia machinery room (AMR) and the audible alarms inside the AMR and at the secondary entry door were not labeled regarding their function. (AOC 10) An example of an industry standards of care is:
- a) ANSI/IIAR 2-2008, Section 13.2.4.1 states, “The meaning of each alarm shall be clearly marked by signage near the visual and audible alarms.”
- 9) At the time of EPA’s inspection, the valve identification numbers on the operating instructions inside the Fire Department Emergency Control to reduce pressures within the system did not correspond to actual valve tags in the control box. (AOC 11) An example of an industry standards of care is:
- a) ASHRAE 15-2013 Section 9.12.6 states, “Stop valves shall be suitably labeled if the components to and from which the valve regulates flow are not in view at the valve

location. Valves or piping adjacent to the valves shall be identified in accordance with ANSI A13.1.”

- 10) At the time of EPA’s inspection, there was no visual ammonia alarm inside the AMR and there was no visual alarm outside the secondary entry door into the AMR from the bottling area. (AOC 12) An example of an industry standards of care is:
- a) ASHRAE 15-2013, Section 8.11.2.1 states, “Each refrigerating machinery room shall contain a detector, located in an area where refrigerant from a leak will concentrate, that actuates an alarm and mechanical ventilation in accordance with Section 8.11.4 at a value not greater than the corresponding TLV-TWA (or toxicity measure consistent therewith). The alarm shall annunciate visual and audible alarms inside the refrigerating machinery room and outside each entrance to the refrigerating machinery room.”
- 11) At the time of EPA’s inspection, ammonia piping entering and exiting the air-cooled condenser was not labeled. (AOC 16) Examples of industry standards of care are:
- a) ANSI/IIAR 2, 2008, Section 10.6 which states, “All piping mains, headers and branches shall be identified as to the physical state of the refrigerant (that is, vapor, liquid, etc.), the relative pressure level of the refrigerant, and the direction of flow. The identification system used shall either be one established as a standard by a recognized code or standards body, or one described and documented by the facility owner”
 - b) IIAR Bulletin 114, 2014, Section 4.1 which states, “Piping markers in accordance with this guideline, are designed to identify the refrigerant contained within that piping segment (i.e., ammonia) including the physical state of the refrigerant, relative pressure level of the refrigerant and direction of flow.”
- 12) At the time of EPA’s inspection, the low-pressure receiver pressure relief valves (PRVs) had corroded inlet piping. (AOC 17) An example of an industry standards of care is:
- a) IIAR Bulletin 109, Section 4.7.4 which states “uninsulated refrigerant piping should be examined for signs of corrosion. If corrosion exists, the pipe should be cleaned down to bare metal and painted with a rust preventive paint. Badly corroded pipe should be replaced.”
- 13) At the time of EPA’s inspection, the two high-pressure receivers had a common set of PRVs that are sized for a single pressure vessel. (AOC 19) An example of an industry standards of care is:
- a) ANSI/IIAR 2, 2008, Section 11.2.7 states, “when one pressure relief device is used to protect more than one pressure vessel, the required capacity shall be the sum of the capacities required for each pressure vessel.”

Minimize Consequences of Accidental Releases

The Company failed to minimize the consequences of accidental releases of regulated substances, as identified in the following deficiencies.

- 14) At the time of EPA's inspection, there was an eye wash station in the AMR but no safety shower. (AOC 20) Examples of industry standards of care are:
 - a) IIAR 9, 2020, Section 7.3.7.1 states, "Each machinery room shall have access to a minimum of two eyewash/safety shower units, one located inside the machinery room and one located outside of the machinery room, each meeting the requirements in Section 7.3.7.3."
 - b) IIAR Bulletin 109, 1997, Section 4.10.10 states, "An emergency eye wash station and deluge body shower shall be located just outside the machine room exit door. An additional emergency eye wash station and deluge body shower should be readily accessible inside the machinery room."
- 15) At the time of EPA's inspection, the emergency shutdown box was secured with a lock that would prevent access in an emergency. According to Facility personnel, the Fire Department who would respond to an ammonia release emergency do not have a key to the lock. (AOC 21) An example of an industry standards of care is:
 - a) ANSI/IIAR 2, 2008, Section 13.1.13.2 states, "A remote emergency shutdown control for refrigerant compressors, refrigerant pumps, and normally closed automatic refrigerant valves within the machinery room, shall be provided immediately outside the designated principle exterior machinery room door. The remote control shall be a clearly identified switch of the break glass type or with an approved tamper resistant cover, and it shall provide emergency off only control."
- 16) At the time of EPA's inspection, there had been no coordination with the groups that will be responding to ammonia emergencies such as the fire department. The Facility would also benefit from ammonia release-specific drills that coordinate with the fire department responders. (AOC 23) An example of an industry standards of care is:
 - a) CalARP regulation Title 19, Division 2, Chapter 4.5, Article 7, Emergency Response, Section 2765.1(b)(1), "The owner or operator must document that response actions have been coordinated with the local fire department and hazardous materials response agencies." Simply providing a copy or a version of the Emergency Action Plan to the CUPA in the annual hazardous materials business plan submittal or CalARP submittal is not sufficient.
 - b) Factory Mutual Insurance Company July 2021, Section 3.6.1, states, "Developing good relations between the fire service and facility management helps everyone understand the hazards at the facility and will help everyone understand concerns associated with the facility...Good pre-incident planning involves conducting a site visit with the public fire service on the property so that if an emergency strikes, personnel and firefighters will act as a team."

Before filing a Determination of Violation, Compliance Order and Notice of Right to Request a Hearing (“Complaint”), EPA is extending to the Company an opportunity to advise EPA of any other information that the Company believes should be considered before the filing of such a Complaint. Relevant information may include any evidence of reliance on compliance assistance, additional compliance tasks performed subsequent to the inspection, or financial factors bearing on the ability to pay a civil penalty. EPA has reviewed the documents included in the Company’s previous transmittals. These documents do not need to be resubmitted.

After review of the documents provided, EPA also requests clarifying information. With this letter and its enclosure (“Information Request”), EPA seeks further information and documents relating to the potential violations above. This Information Request is authorized pursuant to Section 114 of the CAA, 42 U.S.C. § 7414.

Please note that, pursuant to regulations located at 40 CFR Part 2, Subpart B, you are entitled to assert a business confidentiality claim covering any part of any submitted information as defined in 40 CFR § 2.201(c). Asserting a business confidentiality claim does not relieve you from the obligation to respond fully to this letter. Failure to assert such a claim makes the submitted information subject to public disclosure upon request and without further notice to you, pursuant to the Freedom of Information Act, 5 U.S.C. §§ 552 et seq. Information subject to a business confidentiality claim may be available to the public only to the extent set forth in the above-cited regulation. EPA has authority to use the information requested herein in an administrative, civil, or criminal action. In addition, EPA has not waived any rights to take enforcement action for past or future violations.

Any penalty proposed for violation of the CAA will be calculated pursuant to EPA’s June 2012 “Combined Enforcement Policy for Clean Air Act section 112(r)(1), the General Duty Clause, and Clean Air Act section 112(r)(7) and 40 CFR Part 68, Chemical Accident Prevention Provisions”¹ (“112(r) Penalty Policy”) and EPA’s September 30, 1999 “Enforcement Response Policy for sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and section 103 of the Comprehensive Environmental Response, Compensation and Liability Act” (“EPCRA Penalty Policy”).² These policies are subject to inflation adjustments under the Civil Monetary Inflation Adjustment Rule, as well as other potential changes in EPA guidance.³ Civil penalties may be mitigated under the EPA “Supplemental Environmental Projects Policy,”⁴ which describes the terms under which a commitment to perform an environmental project may mitigate, in part, a civil penalty.

¹ www.epa.gov/sites/production/files/documents/112rcep062012.pdf

² www.epa.gov/sites/production/files/documents/epcra304.pdf

³ Amendments to the EPA’s Civil Penalty Policies to Account for Inflation (effective January 15, 2020) and Transmittal of the 2020 Civil Monetary Penalty Inflation Adjustment Rule, <https://www.epa.gov/sites/production/files/2020-01/documents/2020penaltyinflationruleadjustments.pdf> ; *see also* Penalty Policy Supplements Pursuant to the 2004 Civil Monetary Penalty Inflation Adjustment Rule, www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf

⁴ <https://www.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf>

*Your response to this letter must be made by a letter, signed by a person or persons duly authorized to represent the Company. Please send any such response **by email** to Caleb Wright, Physical Scientist, wright.caleb@epa.gov and Madeline Gallo, Assistant Regional Counsel, Office of Regional Counsel, gallo.madeline@epa.gov. **Please provide such information so that it is received no later than thirty (30) calendar days after receipt of this letter.** EPA anticipates filing a Complaint in this matter after receipt of this letter unless the Company first advises EPA, with supporting information, of substantial reasons not to proceed as planned.*

EPA encourages the Company to explore the possibility of settlement. If you are interested in commencing settlement discussions, please contact Caleb Wright of my staff at (415) 972-3841 or wright.caleb@epa.gov, or have your counsel contact Madeline Gallo, Assistant Regional Counsel, at (415) 972-3539 or gallo.madeline@epa.gov, to schedule a meeting or conference call. We thank you in advance for your cooperation.

Thank you for your prompt attention to this matter.

Sincerely,

Kaoru Morimoto, Manager
Hazardous Waste and Chemical Section
Enforcement and Compliance Assurance Division

cc (via email):

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